



(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Joint

(Assembly, Senate or Joint)

Committee for Review of Administrative Rules ...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**



State of Wisconsin • DEPARTMENT OF REVENUE

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Jim Doyle
Governor

Roger M. Ervin
Secretary of Revenue

February 8, 2010

Honorable Jim Holperin
Co-Chair Joint Committee for Review
of Administrative Rules
Room 409 South State Capitol
PO Box 7882
Madison WI 53707-7882

Honorable Josh Zepnick
Co-Chair Joint Committee for Review
of Administrative Rules
Room 219 North State Capitol
PO Box 8952
Madison WI 53708-8952

Re: Clearinghouse Rule 09-090

Dear Senator Holperin and Representative Zepnick:

Enclosed are copies of Clearinghouse Rule 09-090 in final draft form, and the Report to the presiding officers of the State Senate and Assembly required under s. 227.19(2) and (3), Stats.

Sincerely,

Roger M. Ervin
Secretary of Revenue

RME:DSK
e:rules\Chapter 11 Committees - JCRAR

Enclosure

DEPARTMENT OF REVENUE

CLEARINGHOUSE RULE NUMBER 09-090

SECTION 227.19(2) AND (3), STATS., REPORT

Basis and Purpose of the Proposed Rule

The rule is necessary to bring Chapter Tax 11 into conformity with the Streamlined Sales and Use Tax Agreement.

Public Hearing

Public hearings were held on December 1 and 15, 2009. No testimony was offered at the hearings.

Summary of Public Comments and Agency Response

Comments were received from the Equipment Leasing and Finance Association, requesting clarification as to whether certain charges are included or excluded from a lease sales price and the proper tax treatment of transactions involving leases with a mandatory purchase and nominal purchase option (the full text of the comments is attached). The requested clarifications have been incorporated, as appropriate, throughout the proposed rule (primarily in ss. Tax 11.29, 11.32 and 11.79).

Legislative Council Staff Recommendations

All Legislative Council staff recommendations have been incorporated in the proposed rule order, with the following exceptions:

- A general recommendation was made to consolidate the information in multiple notes into one note. The notes were reviewed and it was verified that their placement is appropriate for understanding of the subject matter involved.
- A recommendation was made to renumber the items listed in Tax 11.12(4)(b). It was felt that making this change would compromise the readability and ease of understanding of this paragraph.

Regulatory Flexibility Analysis

The proposed rule order does not have a significant economic impact on a substantial number of small businesses.



EQUIPMENT LEASING AND FINANCE ASSOCIATION

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December 15, 2009

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Vicki Gibbons
Division of Income, Sales, and Excise Tax
Wisconsin Department of Revenue
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The Equipment Leasing and Finance Association (ELFA) appreciated the opportunity on November 30th to discuss our concerns with Wisconsin's implementation of the Streamlined Sales and Use Tax Agreement (SSUTA). ELFA asks that the Department of Revenue consider the following questions before adopting permanent Streamline regulations:

Are the below listed charges by a Lessor included or excluded from the lease sales price?

- Personal property tax
 1. Those imposed on lessor
 2. Those imposed directly on lessee
- Personal property tax administration fee
- Contract documentation and administration fees
- UCC, title and registration fees(excluded)
 1. Legal fees?
- Late payment fees (as a flat charge, penalty percentage or at a non-usurious interest rate) (exclude if due to late payment on invoice)
- Returned check fees
- Insurance charges (make mention of 7754.8 exemption for insurance charges)
 1. Credit life and accident insurance
 2. Health Insurance
 3. Casualty, theft and loss
 4. GAP insurance
- Disposal and return fees
 1. examples
- Service contracts
- Warranty and maintenance agreements

What is the proper tax treatment of transactions involving leases with a mandatory purchase and nominal purchase option ("Excluded Lease")?

- We are concerned the permanent regulations do not address variations of finance and conditional sale type leases and how taxpayers should calculate tax after Wisconsin's adoption of the Streamline Lease definition. Discussion should include examples of these various forms of leases:
 1. Mandatory purchase leases and balloon payments
 2. Nominal purchase option leases, greater of 1% or \$100 of gross contract

- In a sale leaseback how will Wisconsin treat the leaseback transaction when it is an excluded transaction from the lease definition? Will Wisconsin recognize this as a finance arrangement and not a transaction for sales tax purposes?
- When a Lessor claims resale on the purchase of property and enters into an Excluded Lease must tax be paid at inception of the lease or will Wisconsin allow an option to collect tax on the installments? Will there be an installment option for retailers maintaining their books and records on a cash basis?
- How is the tax to be calculated on Excluded Leases? Or on the purchase of property financed under an Excluded Lease? If the Lessor is collecting tax as a retailer on a transaction involving an Excluded Lease, please explain the exclusion of interest and finance charges from sales price and if the charge must be separately stated in the documents provided to lessee or if a Lessor may rely upon the charges separately maintained in the books and records?
- If sales tax on an Excluded Lease is collected at the inception of lease on the entire gross proceeds of the contract without an exclusion for interest, will Wisconsin allow for a sales tax adjustment as a result of reduction in gross proceeds due to early payoff?
- If property under an 'Excluded Lease' is relocated to another state, will Wisconsin allow a partial refund of the tax paid at lease inception? Does the answer change if the state of relocation does not give credit for Wisconsin tax paid?

Thank you for your time in considering these important questions for leasing.

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